

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

IN THE MATTER OF:

Gulfco Marine Maintenance Superfund Site
Freeport, Brazoria County, Texas

The Dow Chemical Company, LDL Coastal
Limited, L.P., & Chromalloy American
Corporation

Respondents

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION**

U.S. EPA Region 6

CERCLA Docket No.

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Removal Action (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and The Dow Chemical Company, LDL Coastal Limited, L.P., and Chromalloy American Corporation (“Respondents”). This Settlement Agreement provides for the performance of a removal action by Respondents and the reimbursement of Oversight Response Costs incurred by the United States at or in connection with the removal action pursuant to this Settlement Agreement at the “Gulfco Marine Maintenance Superfund Site” (the “Site”) generally located approximately three miles northeast of Freeport, Brazoria County, Texas, at 906 Marlin Avenue.
2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (“CERCLA”).
3. EPA has notified the State of Texas (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, determinations in Sections IV and V of this Settlement Agreement, and the statements contained in the Action Memorandum attached as Appendix A of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Settlement Agreement.
6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:
 - a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on [REDACTED] by the Regional Administrator, EPA Region 6, or his/her delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.
 - b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
 - c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
 - d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.
 - e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
 - f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
 - g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
 - h. "Oversight Response Costs" shall mean all costs, not inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs, that the

United States incurs from the Effective Date of this Settlement Agreement in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 45 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 80 (work takeover).

- i. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- j. “Parties” shall mean EPA and Respondents.
- k. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- l. “Respondents” shall mean those Parties identified in Appendix B.
- m. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- n. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- o. “Site” shall mean the Gulfco Marine Maintenance Superfund Site, encompassing approximately 40 acres, located at 906 Marlin Avenue in Freeport, Brazoria County, Texas and depicted generally on the map attached as Appendix C.
- p. “State” shall mean the State of Texas.
- q. “TCEQ” shall mean the Texas Commission on Environmental Quality and any successor departments or agencies of the State.
- r. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- s. “Work” shall mean all activities Respondents are required to perform under this Settlement Agreement.
- t. “Work Plan” shall mean the work plan for implementation of the removal action, as set forth in Appendix D to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

IV. FINDINGS OF FACT

9. The Site, as indicated in Appendix A, is an inactive barge cleaning facility where waste disposal occurred. The Site consists of approximately 40 acres located one mile east of Highway 332 at 906 Marlin Avenue in Freeport, Brazoria County, Texas. The geographic coordinates are 2858'07" north latitude, and 9517'26" west longitude.
10. The Site borders 2170 feet of the north shore of the Intracoastal Waterway between Oyster Creek on the east and the Old Brazos River Channel and the Dow Barge Canal on the west. The Site is within an area of 100-year coastal flood with velocity (wave action). The southern part of the Site, south of Marlin Avenue, drains toward the south where it enters into the Intracoastal Waterway. Drainage from the Site area north of Marlin Avenue is to the northeast into adjacent wetlands. These wetlands extend approximately 0.48 miles to Oyster Creek.
11. The Site was operated by Gulfco Marine Maintenance, Inc., from 1971 through 1979. Fish Engineering and Construction, Inc., owned the Site from 1979 until 1989, when the majority of the Site, including Lots 21 through 25, and Lots 55, 57, and 58 (approximately 35 acres), was sold to Hercules Offshore Corporation (later Hercules Marine Services Corporation). LDL Coastal Limited, L.P. acquired Hercules Marine Services' interest in the Site in a bankruptcy sale in 1999. The remaining lot, Lot 56 (approximately five acres), was sold to Jack Palmer and Ron Hudson in 1999.
12. The primary Site operations consisted of draining, cleaning, servicing, and repair of various chemical barges. The barge repair work included welding, sandblasting, and painting. The Site also included three surface impoundments, which were earthen pits with natural clay liners located on Lot 56. Beginning in 1971, the impoundments were used for storage of waste oils, caustics, various organic chemicals, and waste wash waters generated during barge cleaning activities. The impoundments were deactivated in October 1981, and later operations used floating barges and above ground storage tanks to store the barge wash waters.
13. According to a letter from Fish Engineering & Construction, Inc., to the Texas Air Control Board, dated April 14, 1982, between June 1980 and August 1981, the barge cargoes for washing at the Site included: fuel oil, crude oil, diesel, oil residues, gas oil, benzene, xylene, toluene, cyclo-hexane, cumene, ethyl benzene, styrene, hydrochloric acid, glycols, methanol, butanol, chloroform, perchloroethylene, vinyl chloride, acetone, methyl ethyl ketone, and vinyl acetate among other barge cargoes.
14. According to the "Site Inspection Report", dated July 15, 1980, prepared by EPA, discharges occurred from the waste impoundments in July 1974 and August 1979.
15. Respondents are conducting a Remedial Investigation/Feasibility Study ("RI/FS") pursuant to an Amended Unilateral Administrative Order effective January 31, 2008 ("UAO").

16. As part of the EPA-approved Remedial Investigation at the Site, studies and sampling were conducted regarding the former surface impoundments.
17. According to the “Nature and Extent Data Report”, dated May 20, 2009 (NEDR), prepared by Pastor, Behling & Wheeler, LLC, the surface impoundment cap thickness at the four boring locations ranged from 2.5 feet to greater than 3.5 feet.
18. According to the NEDR, the lateral extent of groundwater containing chemicals at concentrations above the RI/FS evaluation criteria is an area within the southern half of the former surface impoundments and a similarly sized area immediately to the south. The vertical extent of groundwater containing chemicals above the RI/FS evaluation criteria is the two uppermost water-bearing units, Zones A and B, to a depth of approximately 35-feet below ground surface. The groundwater in Zones A and B is very saline with total dissolved solids typically greater than 30,000 mg/L.
19. Hazardous substances detected in the Zones A and B groundwater exceeding their RI/FS evaluation criteria include the following: methylene chloride (1,230 mg/L); 1,2-dichloroethane (347 mg/L); 1,1,1-trichloroethane (234 mg/L); trichloroethene (170 mg/L); tetrachloroethene (34.8 mg/L); and 1,1-dichloroethene (23.5 mg/L).
20. The hazardous substances identified above, under certain conditions of dose, duration, or extent of exposure, may produce adverse health and environmental effects. A number of these hazardous substances have been identified as probable human carcinogens. The environmental effects may include reduced survival, growth, or reproduction.
21. According to the memorandum “Gulfco Marine Maintenance Superfund Site, Condition of Storage Tanks and Former Impoundment Cap”, dated June 21, 2010, from Gary Miller to Carlos Sanchez, an inspection of the former impoundments found ruts on the top and woody shrubs in some areas. The ruts and roots from the shrubs may result in increased storm water infiltration through the cap and spreading of the contamination below the cap.
22. According to the Houston-Galveston Area Council of Governments Regional Hazard Mitigation Plan, approved April 28, 2006, Brazoria County and the City of Freeport (where the Site is located) are classified as critical areas for winter storm potential impact and catastrophic areas for hurricanes and tropical storm potential impact. The definition of a catastrophic impact includes more than 50% of property is damaged or destroyed; and a critical impact includes more than 25% of property damaged or destroyed.
23. On , the Action Memorandum was signed.
24. The Site was proposed for listing on the National Priorities List (“NPL”) on September 5, 2002 (67 FR 56794), and was placed on the NPL effective May 30, 2003, in a final rulemaking published on April 30, 2003 (68 FR 23077).

25. Respondent LDL Coastal Limited, L.P. is a domestic limited partnership incorporated in the state of Texas. LDL Coastal Limited L.P. is the current owner of certain parts of the Site, including Tract numbers 21, 21A, 21B, 22, 23, 24, 25, 55, 57, and 58 of Subdivision Number 8, Brazos Coast Investment Company Subdivision.
26. Respondent Chromalloy American Corporation is a corporation incorporated in the state of Delaware, and is a past owner of the Site.
27. Respondent The Dow Chemical Company is a corporation incorporated in the state of Delaware. The Dow Chemical Company arranged for disposal or treatment of hazardous substances, which were owned or possessed by said company, at the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:
 - a. The Gulfco Marine Maintenance Superfund Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
 - b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
 - c. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
 - d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for Oversight Response Costs at the Site. Each of the Respondents is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent LDL Coastal Limited, L.P. is the current owner of certain parts of the Site, including Tract numbers 21, 21A, 21B, 22, 23, 24, 25, 55, 57, and 58 of Subdivision Number 8, Brazos Coast Investment Company Subdivision formerly utilized for cleaning of barges containing hazardous substances and is thus a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Respondent Chromalloy American Corporation, is a past owner of the Site at the time of disposal of hazardous substances at the Site and is thus a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent The Dow Chemical Company arranged for the disposal or treatment of materials containing hazardous substances which came to be disposed of at the Site, and is accordingly a responsible party within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

- e. The conditions described in the Findings of Fact (Section IV) above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

29. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

30. Respondents shall retain one or more contractors to perform the Work. Contractors and subcontractors who have been previously approved to work at the Site under the UAO for RI/FS are hereby approved to perform the Work under this Settlement Agreement. Respondents shall notify EPA in writing of the name(s) of these contractors and subcontractors within thirty (30) days of the Effective Date. Respondents shall also notify EPA in writing of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) subsequently retained by Respondents to perform the Work but who had not been previously approved by EPA under the UAO for RI/FS at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor’s name and qualifications within 20 days of EPA’s disapproval. For any new contractor that has not already been approved to work at the Site under the UAO, the proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor’s Quality Management Plan (“QMP”). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B0-1/002), or equivalent documentation as required by EPA. Any decision not to require submission of the contractor’s QMP should be documented in a memorandum from the OSC and Regional QA personnel to the Site file. The subcontractor(s) can work under the hiring contractor’s QMP and does not have to have an individual QMP.
31. Respondents designate Eric Pastor of Pastor, Behling, & Wheeler, LLC at 2201 Double Creek Drive, Suite 4004, Round Rock, Texas, 78664 (telephone 512-671-3434) as their

Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. By signing this Settlement Agreement, EPA approves Respondents' Project Coordinator but retains the right to disapprove of the designated Project Coordinator in the future. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 20 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

32. EPA has designated Gary Miller of the Remedial Branch, Region 6, and Rita Engblom of the Emergency Response Branch, Region 6, as its On-Scene Coordinators ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at 1445 Ross Avenue, Dallas, Texas 75202.
33. EPA and Respondents shall have the right, subject to Paragraph 34, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

34. Respondents shall perform, at a minimum, all actions necessary to implement the Action Memorandum and the Work Plan attached hereto and incorporated as Appendix D. The actions to be implemented generally include, but are not limited to, the following:
 - Repair of the cap over the former surface impoundments located north of Marlin Road.
35. Work Plan and Implementation.
 - a. The Work Plan for performing the removal action, generally described in Paragraph 37 above, includes a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The Work Plan is attached as Appendix D. By signing this Settlement Agreement, EPA approves the attached Work Plan. In addition, Respondents shall conduct the Work under this Settlement Agreement in accordance with the Quality Assurance Project Plan ("QAPP"). The QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998). The QAPP, prepared for the RI/FS under the UAO and previously approved by EPA, can be used for the removal action to be conducted under this Settlement Agreement.

- b. Respondents shall implement the Work Plan as approved by EPA in accordance with the schedule contained therein. The Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.
 - c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement.
36. Health and Safety Plan. Respondents shall implement the Health and Safety Plan as provided in the Work Plan. This plan was prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan complies with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. Respondents shall implement the Health and Safety Plan during the pendency of the removal action.
37. Quality Assurance and Sampling.
- a. Respondents shall perform all sampling and analyses pursuant to this Settlement Agreement and shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures that have been previously approved by EPA and implemented by Respondents for the RI/FS under the UAO. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.
 - b. Upon request by EPA, Respondents shall have a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA within ten (10) days of request, the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
 - c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or

duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

38. Reporting.

- a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement by the 15th day of every month following the Effective Date of this Settlement Agreement until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
- b. Respondents shall submit five (5) copies of all plans, reports or other submissions required by this Settlement Agreement or the Work Plan. Upon request by EPA, Respondents shall submit such documents in electronic form.
- c. Respondents who own or control property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

39. Final Report. Within sixty-five (65) days after receipt of EPA's approval of the final engineering drawings and technical specifications, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and the "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information

submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

40. Off-Site Shipments.

- a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility’s state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
 - i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
 - ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 43(a) and 43(b) after the award of the contract and at least ten (10) days before the Waste Material is actually shipped.
- b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA’s certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. Potential receiving facilities identified in the Work Plan satisfy this provision and require no additional certification.

IX. SITE ACCESS

41. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

42. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within seven (7) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Oversight Response Costs).
43. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

44. Respondents shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
45. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.
46. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the

document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

47. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

48. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.
49. At the conclusion of this document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondents shall deliver any such records or documents to EPA or the State. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.
50. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

51. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region 6, 214-665-3166, and the EPA Regional Emergency 24-hour telephone number, 1-866-372-7745, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Oversight Response Costs).
53. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (866) 372-7745. In the event of a release of a hazardous substance from the Site that requires reporting to the National Response Center pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Respondents shall immediately notify the National Response Center at (800) 424-8802 and then the OSC at (866) 372-7745. Respondents shall submit a written report to EPA within 7 days after a release of a hazardous substance from the Site that requires reporting to the National Response Center pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

54. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF OVERSIGHT RESPONSE COSTS

55. Payments for Oversight Response Costs.

- a. Respondents shall pay EPA all Oversight Response Costs not inconsistent with the NCP. On an annual basis, EPA will send Respondents a bill requiring payment that includes an Unreconciled Cost Accounting Report (SCORPIOS), which includes direct and indirect costs incurred by EPA and its contractors. Also, Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 60 of this Settlement Agreement.
- b. Respondents shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures provided below and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 06JZ, and the EPA docket number for this action to:

Automated Clearinghouse (ACH)
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

- c. At the time of payment, Respondents shall send notice that payment has been made to by email to acctsreceivable.cinwd@epa.gov, or to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

and to:

Chief, Enforcement Assessment Section
U.S. EPA
1445 Ross Avenue (6SF-TE)
Dallas, Texas 75202-2733

- d. The total amount to be paid by Respondents pursuant to Paragraph 58(a) shall be deposited by EPA in the Gulfco Marine Maintenance Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
56. In the event that the payment for Oversight Response Costs is not made within thirty (30) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Oversight Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.
 57. Respondents may contest payment of any Oversight Response Costs billed under Paragraph 58 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Oversight Response Costs and the basis for objection. In the event of an objection, Respondents shall within the thirty (30) day period pay all uncontested Oversight Response Costs to EPA in the manner described in Paragraph 58. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Texas and remit to that escrow account funds equivalent to the amount of the contested Oversight Response Costs. Respondents shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Oversight Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 58. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 58. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute

Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Oversight Response Costs.

XVI. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.
59. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, with the exception of billings for Oversight Response Costs which are governed by Paragraph 60 where Respondents have within thirty (30) days of receipt of EPA's bill for Oversight Response Costs to notify EPA of their objections to payment, Respondents shall notify EPA in writing of their objection(s) within seven (7) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have fourteen (14) days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.
60. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the branch chief level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

61. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels set forth in the Action Memorandum.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 3 days of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.
63. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

64. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 68 and 69 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.
65. Stipulated Penalty Amounts - Work.
- a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 68(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$5,000	15th through 30th day
\$10,000	31st day and beyond

b. Compliance Milestones

i. Completion of cap repair field activities.

66. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

67. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 80 of Section XX, Respondents shall be liable for a stipulated penalty in the amount of \$25,000.
68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official at the branch chief level or higher, under Paragraph 63 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
69. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.
70. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or

cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency Superfund Payments, Cincinnati Finance Center, Post Office Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 06JZ, the EPA Docket Number 06-13-10, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 58c.

71. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.
72. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.
73. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 80. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

74. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Oversight Response Costs. This covenant not to sue shall take effect upon the Effective Date of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Oversight Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

75. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.
76. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:
- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
 - b. liability for costs not included within the definition of Oversight Response Costs;
 - c. liability for performance of response action other than the Work;
 - d. criminal liability;
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
 - g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.
77. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Oversight Response Costs that Respondents shall pay

pursuant to Section XV (Payment of Oversight Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

78. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Oversight Response Costs, or this Settlement Agreement, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
 - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or Oversight Response Costs.
79. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
80. Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXII. OTHER CLAIMS

81. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.
82. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

83. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

XXIII. CONTRIBUTION

84. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Oversight Response Costs.
- b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Oversight Response Costs.
- c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

85. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

86. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.
87. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

88. At least seven (7) days prior to commencing any on-site Work under this Settlement Agreement, Respondents or their contractors or primary subcontractors that are actually conducting the Work on the Site shall secure, and shall maintain for the duration of their on-site Work, comprehensive general liability insurance of \$1,000,000 per occurrence and automobile insurance with limits of \$1,000,000, combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with the certificates of such insurance and copies of such insurance policies that pertain to the Work at the Site and have been redacted to remove confidential information. Upon EPA's request, Respondents shall submit such certificates of insurance and copies of policies as described above for each such contractor or primary subcontractor each year on the anniversary of the Effective Date if the same contractor or primary subcontractor is still conducting on-site Work.

XXVI. FINANCIAL ASSURANCE

89. Within (thirty) 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$400,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:
- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
 - b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
 - c. a trust fund administered by a trustee acceptable in all respects to EPA;
 - d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

- e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
 - f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).
90. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 92, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.
91. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 92(e) or 92(f) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$570,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.
92. Financial assurance required by this Administrative Order on Consent can be combined and submitted in conjunction with the financial assurance submitted pursuant to the UAO for RI/FS as long as the financial assurance for the removal work as described in this AOC is submitted within thirty (30) days of the Effective Date of this Settlement Agreement.
93. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 92 of this

Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

94. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

95. The OSC may make modifications to any plan or schedule or Work Plan in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.
96. If Respondents seek permission to deviate from any approved work plan or schedule or Work Plan, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 98.
97. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

98. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Oversight Response Costs, or record retention, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final

Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

99. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:
- a. Appendix A is the Action Memorandum;
 - b. Appendix B is the List of Respondents;
 - c. Appendix C is the Site Map;
 - d. Appendix D is the Work Plan.

XXX. EFFECTIVE DATE

100. This Settlement Agreement shall be effective three (3) days after the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

It is so ORDERED and Agreed this _____ day of _____, 2010.

BY: _____ DATE: _____

Samuel Coleman, P.E.
Director
Superfund Division
Region 6
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

Agreed this ____ day of _____, 2010.

For Respondent: The Dow Chemical Company

By:

Title:

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

Agreed this ____ day of _____, 2010.

For Respondent: Chromalloy American Corporation

By:

Title:

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

Agreed this ____ day of _____, 2010.

For Respondent: LDL Coastal Limited, L.P.

By:

Title:

APPENDIX A
ACTION MEMORANDUM

Administrative Order on Consent for Removal Action
Gulfco Marine Maintenance Superfund Site
U.S. EPA Region VI
CERCLA Docket No.

APPENDIX B
LIST OF RESPONDENTS

Administrative Order on Consent for Removal Action
Gulfco Marine Maintenance Superfund Site
U.S. EPA Region VI
CERCLA Docket No.

1. The Dow Chemical Company
2. Chromalloy American Corporation
3. LDL Coastal Limited, L.P.

APPENDIX C
GULFCO MARINE MAINTENANCE SUPERFUND SITE MAP

Administrative Order on Consent for Removal Action
Gulfc0 Marine Maintenance Superfund Site
U.S. EPA Region VI
CERCLA Docket No.

APPENDIX D
WORK PLAN

Administrative Order on Consent for Removal Action
Gulfco Marine Maintenance Superfund Site
U.S. EPA Region VI
CERCLA Docket No.